Lamone M. Johnson,
Plaintiff,
V.
Dr. Sanders et,al
Defendants,

PLAINTIFF'S OPPOSITION TO DEFENDANTS MOTION TO DISMISS AND SPECIAL REPORT
Case No. CIV-19-269-RAW-SPS

PLAINTIFF'S OPPOSITION TO DEFENDANTS MOTION TO DISMISS AND SPECIAL REPORT.

Comes Now Plaintiff Lamone M. Johnson (Mrs. Lamone M. Johnson) in opposition to Defendants Sanders, Larimer, Martinez, Morrison and Taylor's motion to dismiss and special report.

Claim 1's Defendants denied Plaintiff's Claim 1, alleging that Plaintiff was not deprived of or denied due process

Claim 2's Defendants denied Plaintiff's Claim 2, alleging that Plaintiff was not deprived of or denied appropriate and adequate medical treatment.

Footnote 1 - It should be noted that the Plaintiff is a male-to-female transgender whom prefers female pronouns she/her/Mrs.
See 28 C.F.R. §115.05

Claim 3: Defendants denied Plaintiffs Claim 3, alleging that Plaintiff was not subjected to retaliation for filing grievances. Defendants deny that Plaintiff was in Danger.

Claim 4: Defendants denied Plaintiff's Claim 4, alleging that Plaintiff was not subjected to discrimination.

PLAINTIFFS ARGUMENT AND AUTHORITY

Claim 1: The Due Process Clause of the fourteenth Amendment forbids the State from "depriving any Person of life, liberty, or property, without due process of law." See U.S. Const. amend. XIV, §1. The Clause has been interpreted as containing two seperate types of Protection. "substantive due Process" and "Procedural due Process" Both are being applied in this claim.

(i) Substantive Due Process. The substantive aspect of the Due Process Clause Prevents the Goverment from interfering with Your Personal fundamental rights in a way that is not "reasonably related to legitimate penological

Pg 3

interests." See Turner V. Safley, 482 U.S. 78, 87 (1987); Plaintiff Ms. Johnson (Marie) is a Pre-operative Transgender (MTF) whom was born a male, but strongly identifys as a female. (See Compl. A Claim 1, Pg. 5, 6,) The Plaintiff was approved at Joseph harp Corr. Center (a med security Facility) to order Cosmetics due to her being a Transgender Woman in a males Prison. (See COMPL. A. Claim 1, Pg 5, 6, Exhibit 1) the warden Carl bear approved this. Ms. Johnson was transfered to multiple Facilitys after leaving J.H.C.C. (See Compl. A Claim 1, Pg 5, 6, 7) Now only one facility confiscated Ms. Johnson's Cosmetics, That facility was D.C.F., That person was SGT Morrison (Defendant) whom assessed the Plaintiff at D.C.F. Intake. The defendant SGT Morrison searched the Plaintiff's Property found the Cosmetics and frowned and stated" oh hell no, he will not walk around at this facility with make-up." (See COMP. A. Claim 1, Pg 5, Pg 6, Pg 7) Defendants allege that Plaintiff failed to include in her Complaint what a defendant did to the Plaintiff, when the Plaintiff did it, how the defendants actions harmed the Plaintiff and what Specific legal rights

Pg. 4

the Plaintiff believes the defendant violated. This defense is erroneous, More appropriate terms: Irrelevant. It is Clear in the Plaintiff's Complaint that Plaintiff went beyond the scope of describing the events which took place, when indeed the Fed. R. Civ. P. 8.(a) States Provide "a short and Plain statement" on these grounds, the defendant's argument has no merit. Now Defendants Cited Nasious V. Two unknown B.I.C.E. Agents, 492 F.3d 1158, 1163 (10th Cir. 2007), In this Case the Plaintiff filed a 42 U.S.C. § 1983 listing "20 individual defendants, as well as scores of John and Jane Doe defendants, in a 42-Page complaint that is, through much of the document, often difficult to comprehend" id. Nasious, 492 F. 3d 1160 (10th Cir. 2007) In response to this the federal magistrate judge overseeing the Case entered an Order indicating that Mr. Nasious's Pleading did not Comply with the requirements of federal Rules of civil Procedure 8 which instructs "Each averment of a Pleading shall be simple, Concise and direct." Fed. R. Civ. P. 8(e) which in this Case Plaintiff Ms. Johnson met the Pleading requirements, So this Case does not apply to Ms. Johnson's Complaint. Next

Pg5

Defendants allege that "Plaintiff has failed to Plausibly plead that Defendants, by Virthe of their own Conduct and state of mind, Violated the Constitution. See Dodds V. Richardson, 614 F.3d 1185 (10th Cir. 2010) In this Case a Plaintiff was denied bail due to a County Clerks Policy, The Plaintiff sued the Sheriff in his individual Capacity, the Defendant (sheriff) Claimed Qualified immunity the court held that (1) fact issue remained as to deprivation of arrestees due Process rights; (2) fact issue remained as to sheriffs Personal involvement causing due process violation; (3) fact issue remained as to Sheriff's deliberate indifference to arrestees due Process right; and (4) fact issue remained as to deprivation of Clearly established due Process right. id Dodds V. Richardson, 614 F.3d 1185, 1208 (10th Cir. 2010) In Plaintiff's Case the Defendants all had Personal involvement in Violating Ms. Johnson's rights (See exhibit's 4-2, 5, 5(Backside), 6-1, 6-2, 4-1, 18-3, 18-4, 18-5, 18-6, 18-7, 19-1, 19-2, 19-3, 19-4, 19-6, 19-7, 19-8, 19-9, 19-20, 19-21, 19-21 (Backside), 19-22, 19-23, 19-24, 19-25, 19-26, 19-27, 20-1, 20-2, 20-3, 20-4, 20-5, 20-6, 20-7, 22-1, 22-1 (Backside), 22-2, 22-2 (Backside), 22-3, 22-4, 22-5, 23-3, 25-1 25-2, 25-3, 25-4, 25-5, 25-6, 25-7, 25-8,

Pg. 6

25-9, 25-10, 25-11. Decl. La more Johnson, Decl. Marquis Porter.) In all respects Ms. Johnson (1) wrote Defendants RTS, Sick calls, Inmate request, Grievances, Appeals which put them on "Notice" that ~~they~~ their actions were violating Plaintiff's rights so the Defendants knew of the risks, unconstitutional Practice and disregard Plaintiff's rights (see Farmer V. Brennan, 511 U.S. 825, 842 (1995.); Estelle V. Gamble, 429 U.S. 97 (1976); Gutierrez V. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997.)) The state of mind was clearly "motivated by evil motive or intent," "reckless ... callous indifference to Your rights." See: Smith V. Wade, 461 U.S. 30 (1983) Plaintiff is entitled to all her requested reliefs. furthermore defendants allege they "followed Policy of O.D.O.C." The case that defendant Cites is exactly a Perfect example of when A Policy Violates the Plaintiff rights and the Plaintiff informs You in Grievances that this "Policy" or "Custom" violates Your right, You (Defendants) Can be held liable when they continue to follow that Policy (see Document 37, Defen. Answer to Plaintiff's Amen Compl. Pg 2, 3) See: Dodds V. Richardson, 614 F.3d 1185, 1194, 1195, 1196, 1197, 1208 (10th Cir. 2010); Ashcroft V. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009.);

Pg:7

Monell v. Dept of Social Serv., 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed. 2d 611 (1978); "Personal involvement is not limited solely to situations where a defendant a defendant violates a Plaintiff's rights by physically placing hands on him." Fagan v. Gallegos, 523 F.3d 1147, 1162 (10th Cir. 2008) Personal involvement does not require direct participation because § 1983 states "any official who "causes" a citizen to be deprived of her constitutional rights can also be held liable." Buck v. City of Albuquerque, 549 F.3d 1269, 1279 (10th Cir. 2008) (quoting Snell v. Tunnell, 920 F.2d. 673, 700 (10th Cir. 1990.). This claim however is substantive due process. See Green v. Post, 574 F.3d 1294, 1301 (10th Cir. 2009); Weber v. Mefford, 43 F.3d 1340, 1342 (10th Cir. 1994) (EA) government official violates an individual's fourteenth Amendment rights by injuring his or her life, liberty, or property with deliberate or reckless intent") which in this case Defendant SGT Morrison injured Plaintiff's Property. by destroying it when her Supervisor Cheif Dadman told her to return Plaintiff's Cosmetics (See exhibit 25) which by then SGT Morrison Destroyed "My Property when indeed I requested it be Mailed home via Postal Mail". [redacted] It

wasnot granted. further more Exhibit 3 was submitted to this court on my behalf with the Yellow Carbon Copy which stated The true written form, Defendants submitted a falsified document with error, and fraud. (See ~~et~~ Defendants exhibits 1) Stating i refused to sign on 5-16-18 and resigned on 5-6-18, That is a straight lie. I refused to sign on 5-16-18 then after speaking to the SGT, i was told to just" file alts to medical and If they approve it, i can have it back." which I signed after speaking to the SGT on the exact same day 5-16-18 (See exhibit 3) on 6-12-18 Chief dorman Stated in a alts my Items would be getting returned. I showed SGT Morrison (Defendant) whom still refused to retese my Property (See exhibit 25-12) The defendant SGT Morrison Credibility should be dismissed She is not a reliable witness, for this relief Plaintiff does Prayl, also that Defendants ~~Defenses~~ Seperate and alternative affirmative defenses be denied, dismissed, and that Defendants be denied attorney fees and costs for defense Of this action, and that the court rules this motion over Defendants motion to dismiss, and any other appropriate relief. The Procedural Due Process is also vice-versa in this case. ~~Claims~~ No need to elaborate, Plaintiff Consethently Proved both the

Pg#9

Process Clauses with Argument and Authority earlier established.

Claim 2: The Eight Amendment to the U.S. Constitution gives Convicted inmates the right to medical Care. (See Barrie V. Grand County, Utah, 119 F.3d 862, 868-69, (10th Cir. 1997.); Estelle V. Gamble, 429 U.S. 97, 103 (1976). Jail and Prison officials violate the Constitution when they act with deliberate indifference to an inmates serious medical needs. (1.) Serious medical need:, The 10th Circuit recognized a Serious medical need as "has been diagnosed by a Physician as mandating treatment or one is so obvious that even a lay person would easily recognize the necessity for a doctors attention." See Sealock V. Colorado, 218 F.3d 1205, 1209, (10th Cir. 2000); Prison officials must take care of the inmates serious medical needs or else they wouldn't taking care of. "[An] Inmate must rely on Prison authorities to treat his medical needs: if the authorities fail to do so, those needs will not be met." Estelle V. Gamble, 429 U.S. 97, 103 (1976); Gender Identity disorder is a serious medical need. See: Brown V. Zavaras, 63 F.3d 967, 970 [10th Cir. 1995.] ["Prison officials must Provide treatment to address the medical needs of transsexuals Prisoners"]; Oxxo V. Mark Singh, 222 F.3d 99, 106 [2d. Cir. 2000]; Meriwether V. Faulkner, 821 F.2d 408

Pg 10

6th Cir. 1987.]; Phillips v Michigan Dept of Corrections, 731 F. Supp. 792, 799. [W.D. Mich. 1990]; Plaintiff Ms. Johnson was and has always been and is a Transgender (transexual) woman (See Compl, exhibits 71, 72, 73) Plaintiff Ms. Johnson was on HRT (Hormone replacement Therapy) Prior to O.D.O.C. Custody (See exhibits 81, 82, 83, 84, 85, 82 Backside, 83 Backside, 13) Plaintiff was on hormone replacement therapy while in the O.D.O.C Custody as well, (See exhibits 10-1, 10-2, 10-3, 10-4) Ms. Johnson Serious medical need was known by defendants.

(2.) Officials Knowledge of need? Plaintiff Ms. Johnson filled out "Sick Call Slips", (See exhibits: 12-2, 12-3, 12-4, 19-1, 19-2, 19-3) Grievances" (See exhibits: 18-5, 18-6, 19-4, 19-5, 18-3, 18-4, 18-7, 19-6, 19-7, 19-8, 19-9, 19-20, 19-21, 19-22, 19-23, 19-24, 19-25, 19-26) Appeals" (See exhibits 19-22, 18-7) and Put officials on notice that they were violating Plaintiff rights to Serious medical care. the officials met the deliberate indifferance claim.

(3.) failure to Provide treatment?: The U.S. Supreme Court circle that the constytution Prohibits officials from" intentionally denying or delaying access to medical or intentionally interfering with the treatment once Prescribed."

Ryall

[Id. Estelle 1429 U.S. at 104-05] Plaintiff Ms. Johnson's medical records show she was evaluated before her incarceration for gender dysphoria by the Oklahoma County sheriffs office medical and mental health staff. (See exhibits 85) the medical official is responsible for information that he gets during his examinations of an inmate. Green Vs Branson, 108 F.3d 1296, 1303 (10th Cir. 1997) g review of the inmates and letters from other doctors. Greason Vs Kemp, 891 F.2d 829, 831-32, (11th Cir. 1990) (Prior therapist sent letter to Prison officals and Prison doctor describing inmates current mental health status...)

(a.) You are denied medical attention?, Plaintiff Ms. Johnson was denied having gender dysphoria and/ or Gender identity disorder. when indeed the Psychologist is not a gender identity disorder Specialist. she is not qualified to diagnose or deny plaintiff's treatment Inmates of Allegheny County Jail V. Pierce, (612 F.2d 754, 762-63 (3d. Cir. 1979) (Jail required to Provide inmates access to medical Personell qualified to diagnose and treat mental disorders) See exhibits 17-1-113, 17-16, 17-13, 17-22-33.)

b. Officers interfere with Your Prescribed treatment? plaintiff Ms. Johnson was on estradiol (Estrogen) and Spironolactone (Aldactone) these two medications combined are for Hormone replacement therapy.

Pg 12

Ms. Johnson was prescribed this treatment before she was incarcerated and was continued because it was previously prescribed. (See exhibits #1, #2, #3, #4, #5, B, 10-01, 10-2, 10-3, 10-4) The defendants Rall Lardner and Dr. Sanders discontinued Ms. Johnson's HRT medication. (See exhibit 19-1, 19-2, 19-3, 19-4, 19-5)" It is one thing to fail to provide an inmate with care that would improve his or her medical state, such as refusing to provide sex reassignment surgery or to operate on a long-endured cyst. Taking measures which actually reverse the effects of years of healing medical treatment ... is measurably worse, making the cruel and unusual determination much easier." Phillips V. Mich. Dep't. of Corrections, 731 F. Supp. 792 (W.D. Mich. 1996); Wolfe V. Horn, 130 F. Supp. 2d 648, 653 (E.D. Pa. 2001) (ruling that where a prison doctor discontinued a patients hormone treatment that she had been receiving for almost a year, there was "at least a fact question as to whether each of the defendants was deliberately indifferent to treating [The Plaintiffs gender identity disorder.]") White V. Napolean, 897 F.2d 103, 106-10 (3d Cir. 1990); Steele V. Shah, 87 F.3d 1266,

Pg. 13

127a (11th Cir. 1996) (deliberate indifference for Prison doctor to discontinue psychotropic medications Prescribed for inmate at Previous Prison on the basis of one minute interview and without reviewing most medical records.

(4.) Causation And Injury? Plaintiff Ms. Johnson Informed Defendants of the Pain She was experiencing, the transformation She was enduring, the mental health issues She are experiencing and the suicide attempts which Plaintiff have done and will likely continue to do unless She is issued her HRT (See exhibits 19-4, 19-27, 19-24.) Plaintiff Johnson is uncomfortable with her assigned sex at birth and strongly desires to be a woman. By having breast, A sex change operation (Sex reassignment Surgury) To have her Identification and birth certificate say "female" means everything to Plaintiff. To have People refer to her as female Pronouns means everything to Plaintiff, Hormone Therapy meant everything to Plaintiff but defendants took that away from her. Now the Plaintiff suffers from Breast Pain, Neck Pain, Back Pain, Breast sagging, (Droopy Breast) Dry Damaged hair, Cramps as well as Plaintiff's suffers from

severe Gender dysphoria, not wanting to "Get up", move around, or do any daily activites. Farmer V. Moritsugh, 163 F.3d 610, 611 (D.C. Cir. 1998) this condition, also called Gender dysphoria is commonly accompanied by a desire to change ones anatomic sexual features to conform physically with one's perception of self. To relieve this gender discomfort, Transexuals may pursue some combination of hormone therapy, surgery and psychological counseling. They may also choose to live in their preferred gender role by dressing, naming, and conducting themselves in conformity with that gender" See also magyer V. Hanks, 131 F.3d 670, 671 (7th Cir. 1997) (describing gender dysphoria as "a profound psychiatric disorder.") by stopping the plaintiff's medication it amounted to deliberate indifference to a serious medical need especially when the defendants knew of the irreparable harm the Plaintiff would face, Greason V. Kemp, 891 F.2d 829, 834 (11th Cir. 1990); Waldrop V. Evans, 871 F.2d 1030, 1033-34 (11th Cir. 1989) furthermore Claim 2 shall not be dismissed because the defendants met the requirements, Defendants affirmative defenses and requested attorneys cost and fees shall be denied. For this relief

Pg.15

Plaintiff does Pray.

Claim 3: To win a failure-to-protect claim, You must Prove that the officals whom You are suing actually knew about a substantial risk of serious harm and Yet failed to respond reasonably.

(1.) Substantial risk of serious harm? In 1994 the U.S. Supreme Court held that the Constitution gives inmates a right to be protected from assault by other inmates. Farmer V. Brennan, 511 U.S. 825 (1994); Plaintiff Ms. Johnson was threated by the STG "Rollin 60's" because of her sexual identity. The Plaintiff was informed by other inmates that the STG (Security threat group) Paid other inmates to kill her and another inmate "on sight." Plaintiff Ms. Johnson filed a RTS (start of the Grievance Process) to her case manager - Defendant Shanna Taylor, informing her of the threat. (See exhibit 22-1) this threat was a substantial risk of serious harm. Both defendants were made aware of this harm. (See Comp, See declarations of Plaintiff and inmate Martin's Porter) The Plaintiff is the minority group "LGBTQIP" Community. Due to this "Contract" (hit) being placed on Plaintiff and

Pg. 16

another inmate, Plaintiff is only safe around that other inmate whom has the same contract placed on him, Any other inmate could be paid currency to harm Plaintiff. Plaintiff is currently housed at O.S.P. (Oklahoma State Penitentiary) where 2 of these Inmates whom are paid to harm her reside also. Farmer, 511 U.S.A. at 843 ("[I]t does not matter whether the risk comes from a single source or multiple sources, any more than it matters whether a prisoner faces an excessive risk of attack for reasons personal to him or because all prisoners in his situation face such a risk.") Marsh V. Butler County, 268 F.3d 1014, 1029 (11th Cir. 2001) (en banc) (listing multiple conditions of confinement that could give rise to substantial risk of serious harm to Jail inmates); Street v. Corrections Corp. of America, 102 F.3d 810, 813 (6th Cir. 1996); Weiland V. Strahan, 245 F.3d 934, 939 (7th Cir. 2001); Greene V. Bowles, 361 F.3d 290, 294 (6th Cir. 2004)

(2) Officials Knowledge of risk? Plaintiff Informed both Defendant(s) Shanna Taylor, Ernesto Martinez, inmurity of the threat that was made against her. Names of some of the inmates that were paid to

Pg; 17

to harm her. (See exhibit's 22-1, 22-2, 22-3, 22-4, 22-5.) these request to staff's, Grievances put officals on notice of the substantial risks of serious harm. Ernesto martinez was one of the few staff members who was present during the Plaintiff's PMI (Protective Measures Investigations) which occured march 5th 2019,

(3.) officers failure to respond reasonably? on 3-12 19, Plaintiff was falsely accused of a fight with a inmate whom she was celliesWith, and whom also had been threated by the same STG and was also paid to be killed. Defendent Ernesto martinez wrote this false misconduct 3-12-19 Plaintiff did not Plead guilty because she did not fight inmate Porter. Mr. Ernesto martinez did not see a fight, Nor did he ever ask Plaintiff or the Inmate marquis Porter was there a fight. (See Plaintiff's and inmate Porters Decl.) Plaintiff fell off bunk trying to turn off the light and hit her nose which led to her nose bleeding. Prior to falling off the bunk Plaintiff and her cell Inmate Porter where horse Playing but that's common in Prison, Just laughing, [redacted]

Pg:18

Both Plaintiff and Inmate Porter was placed back in the cell; Officers concluded there was no fight. (See Plaintiff's and Inmate Porter Decl.) this happend on 3-6-19. Six days later After the P.M.I was Completed Defendant Ernesto martinez written a false misconduct report stating he "concluded a fight had occured" when in FACT, he never talkd to Plaintiff or Inmate Porter or Cpt.'s, LT's, SGT's, C.O's to determine if a fight had "occured" so how could he conclud a fight had occured? When No Investigation was done. The Merriam-Webster's Dictionary AND Thesaurus defines Investigation as follows: "Investigation N. The action or Process of investigating; esp: detailed examination or a searching inquiry. (Merriam-Webster's, Dictionary AND Thesaurus, 576 (2006).) Mr. Ernesto Martinez did not examine, search inquiringly. So his "Conclusion" was not based on [illegible]rt, facts, but "evil and sadistic [illegible]ves." (See Plaintiff's and Inmate [illegible] declarations) because of his [illegible]obic, Homophobic behavior. [illegible]duct was ongoing Plaintiff [illegible] was threated by the Defendent [illegible]f her and Inmate Porter did [illegible] they would be seperated

Pg:18

Both Plaintiffs and Inmate Porter was placed back in the cell; Officers concluded there was no fight. (See Plaintiffs and Inmate Porter Decl.) this happend on 3-6-19. Six days later After the P.M.I was Completed Defendant Ernesto martinez written a false misconduct report stating he "concluded a fight had occured" when in FACT, he never talkd to Plaintiff or Inmate Porter or Cpt.'s, LT's, SGT's, C.O's to determine if a fight had "occured" so how could he conclud a fight had occured? When No Investigation was done. The Merriam-Webster's Dictionary AND Thesaurus defines Investigation as follows: "Investigation N. The action or Process of investigating; esp: detailed examination or a searching inquiry. (Merriam-Webster's, Dictionary AND Thesaurus, 576 (2006).) Mr. Ernesto Martinez did not examine, search inquiring. So his "Conclusion" was not based on merit, facts, but "evil and sadistic motives." (See Plaintiff's and Inmate Porter's declarations) because of his transaphobic, Homophobic behavior. this misconduct was currently Plaintiff Ms. Johnson was threated by the Defendent martinez that if her and Inmate Porter did not "Plead guilty" they would be seperated

Pg 20 of 50

and their P.M.Z.'s would be removed and both would be subjected to assault or killed by the "Paid" inmates. Plaintiff told Martinez that is a Due process violation of the 14th Amendment to the U.S. Constitution. Plaintiff Plead Not guilty initially, but after Ernesto Martinez threats Plaintiff was afraid of her life so she plead guilty. Inmate Potter did not Plead guilty and was moved to a whole nother Pod. Ernesto Martinez stated "I don't Protect bitchs and fags." "I'm not Your baby sitter!" You do the hard crimes, You do the hard times." By removing Inmate Potter from the Cell Ernesto Martinez Placed both in a Serious Risk to be Killed. Due to Defendants Martinez not responding reasonably Plaintiff is Now subjected to being Killed. responding reasonably would've been Investigating this Situation thoroughly, Not Seperating both inmates whom had the same Contract Hit on there head. Ernesto Martinez despises the [LGBTQIP Community] he is trans and homophobic. Why else would he threat the Plaintiff to Plead guilty or suffer Irreparable harm?, the statute of limitations for the misconduct ran out, the misconduct was written a week later (3-12-19) This itself is not a "reasonable response." AN Inmate

Pg 20

Rossco Craig, a bi-sexual male was murdered on 6-24-19, ON FO-213 (two doors down from Plaintiff) he ~~repeatedly~~ repeatedly told Ernesto Martinez he did not feel safe with a celly because his last celly hogtied him and beat him up. Defendant told Mr. Craig that if he didn't take a celly he would be written up and his level 4 dropped and his "good days" would be taking and he wouldn't go home in 5 to 6 months. Rossco Craig took a celly and was murdered on 6-24-19, Mr. Ernesto Martinez has a pattern of not responding reasonably when LGBTQZP Zinmates are Znvolved. He did not take Plaintiff's a Transgender own safety views into Serious Consideration. See 28 C.F.R. § 115.42(e) as well as he did not "communicate effectively and professionally with inmates, including lesbian, gay, bi-sexual, Transgender, intersex or gender non-conforming inmates." See 28 C.F.R. § 115.31(a),(9) He did not take Plaintiff's own Perception of assault or safety views into serious consideration.

(4.) Causation and injury? Mr. Martinez stated he didn't "Protect bitches and fags." then after that he stated that if the plaintiff did not "Plead guilty" to a false misconduct report that her P.M.I would be removed and she

Pg. 21

would be subjected to violence. So to answer the Defendant's denial, Ms. Johnson is in real danger.

(i) The first Amendment Prohibits Jail and Prison Officals from retaliating against inmates who report complaints, file Grievances, or file lawsuits. See, Penrod V. Zavaras, 94 F.3d 1399, 1405 (10th Cir. 1996.) ; Crawford-EL V. Britton, 523 U.S. 574, 588 (1998) (stating that "[T]he reason why ... retaliation offends the constitution is that it threatens to inhibit exercise of the protected right.") Government actions, which standing alone do not violate the constitution, may nonetheless be constitutional torts if motivated insubstantial part by a desire to punish an individual for exercise of a constitutional right." Thaddeus-X V. Blatter, 175 F.3d 378, 386 (6th Cir. 1999.)(en banc);

To prove a retaliation claim, You must show three things:

(1) You were doing something You had a Constitutional right to do? "protected Conduct;" Plaintiff Ms. Johnson filed a request to staff (which is the beginning of the O.D.O.C. Grievance

Pg 22

process.) On and to Shanna Tallar on 1-25-19, (see exhibit 22-1) Shanna Tallar (defendant) responded 2-18-19, On 2-21-19, Plaintiff turned the RTS into A Grievance (see exhibit 22-2) Because defendant Shanna Tallar did not do all 11 names Plaintiff listed. On 3-14-19 the "grievance Decision was received, concluded (see exhibit 22-3)

(2.) What the Prison official(s) did to him, which is a "adverse action" was so bad that it would stop an "average person" from continuing with their suit? Shanna Tallar supervisor unit manager Ernesto martinez wrote a false misconduct on Plaintiff and herold Cellmate marquis Porter (see exhibit 23-3) allegin that there was a fight. In this offense report Defendant martinez states" on the above date and approximate time unit manager martinez concluded an investigation which revealed that occured between inmate Lamare ute Porter." How can him "conclude" stigation which ~~[illegible]~~ him nce came and spoke with iff Johnson and Inmate Porter? nesto martinez had no direct ement in the "alleged fight." Why?

Pg 23

because there was never a fight. Defendant Shanna Taylor and Ernesto Martinez came to Plaintiff Johnson's cell and told her and Inmate Porter that if they did not plead guilty? they would be moved and their P.M.I. Packet would be removed and that they both would be subjected to violence. Plaintiff Johnson Plead guilty out of fear. (Plaintiff later filed a RTS on and to Ernesto Martinez about these events the RTS somehow disappeared and was never returned to the Plaintiff.) Porter (the cellmate) Plead not guilty. This Infuriated Ernesto Martinez and he Moved Inmate Porter and stated he "don't protect bitches and fags." This all took place on 3-14-19. (See's Plaintiff and Inmates Porters Decl.)

(3). There is a Causal Connection? On 3-14-19 the Grievance Decision was Decided. On 3-12-19 the false misconduct was written by ~~Shanna~~ Ernesto Martinez (Defendant) (Shanna Taylor's Supervisor.) Prior to the Grievance Decision Shanna Taylor "Investigated" the "matter" (See exhibit 22-3) This is the same exact day that Shanna Taylor and Ernesto Martinez came to threat

Pg's 24.

Plaintiff and Inmate Porter to Plead guilty or be subjected to violence. (See declarations) Wherefore Defendants retaliated against Plaintiff for filing grievances, If No Grievance would've been filed? No false misconduct would've been written. Defendants requested dismissal should be denied and relief also denied and Affirmative defenses denied. This relief Plaintiff does Pray.

Claim 4's To win a equal Protection Claim You must show that You are being treated differently than other Prisoners and that Your treatment is not rationally related to a legitimate governmental Purpose.

(1) Diffent treatment? In 1996 the U.S. Supreme Court ruled a Colorado state law unconstitutional, that Prohibited regulations Protecting gay People from discrimination See's Romer vs Evans, 517 U.S. 620 (1996) Defendant Ernesto Martinez has written false misconducts on Plaintiff, Placed Seperation against Plaintiff and Inmate Marquis Porter for filing grievances and being LGBT Q.I.P Community based Inmates. (See Plaintiff and Inmate Porter's Decl.) All because of those two factors Plaintiff's were treated diffrently. Defendants Statement alone

Pg. 25

"I don't Protect bitchs and fags." Is Suffient enough to Prove the discrimination "diffrent treatment" Part.

(2.) Treatment is not rationally related to a legitimate governmental Purpose? Defendants Conduct was motivated by Transphobic and Homophobic mind set. (See decelrations) Not rationally related to a legitimate governmental Purpose. See. Doe vs Sparks, 73 F. Supp. 227 (W.D. Pa. 1940.) & McCleskey v. Kemp 481 U.S. 279, 292, 107 S Ct 1756, 1767 (1987) (noting that a successful equal Protection Claim must Prove that there was Purposeful discrimination.) Lawrence V. Texas, 539 U.S. 558, 567 (2003) Wherefore Defendant's conduct was "evil and sadistic." So he's motion to dismiss Shall be denied. and all other relief. This relief Plaintiff does Prall.

Special Report Findings Response from Plaintiff's

(1) Plaintiff Ms. Johnson arrived from Dick Conners Correctional Center (D.C.C.C.) to Davis Corr. Facility. And was allowed to Purchase Cosmetics

Pg 26

While at J.H.C.C (Joseph Harp Corr. Center) which was the second facility Plaintiff was at, Lexington Corr. center (L.C.C.) the third, Dick Conners Corr. center (D.C.C.C.) the fourth, Davis Corr. Facility (D.C.F.) the fifth. SOZf these "cosmetics were not allowed" to transgender inmates they would've never been (1.) approved at O.D.O.C. Facility by the facility head. (2.) Before arriving to Davis Corr. Facility? the 2 previous O.D.O.C Facility Property officers would've confiscated these cosmetics, it should be noted that CCA is a private owned facility whom is clearly not familiar with O.D.O.C Policy. Zf so they would've never told Plaintiff off her former replacement therapy. (See exhibits 84, 83, 83 Backside, 82, 82 Backside, 85, 91, 91 Backside, 10-1, 10-2, 10-3, 10-4, Exhibit 13, 20-5) Plaintiff Objects to Defendants TYPO-error on the "Report of Review of fact. Basis of Claims Asserted in Civil rights complaint, Allegations made by Plaintiff Johnson, Count 1, The head COMPtroller in fact is who made it possible for Plaintiff to order these Products (See exhibit 26-1) (2.) response to Investigations. Defendants clearly state that Plaintiff Ms. Johnson arrived with 3 cosmetics on her Property. (See exhibit 2,3) (See defendants

Pg:27

Exhibit 1) the same Policy Defendants State, are not alloued for the Property officer to destroy or take anything unless it is Contraband, Contraband is Considered as follows: (see Defendant exhibit 1, OP-030120, Inmate Property, Pg 3, E. Possession of Contraband., "(1) Any Item(s) found in the inmates Possession that is 'Not' listed on his/her 'Property' form' will be considered Contraband...", Plaintiff Cosmetics were on her Property list see exhibit 2 (Plaintiffs exhibit), Now the Second Part of the Possession of Contraband is as follows "2. Any Item(s) found listed on the Property form that has distorted or altered markings or that has been substantially (either internally or externally) modified from the manufactures... will be considered Contraband.") Plaintiff passed both Contraband test wherefore Plaintiff Cosmetics should have never been Considered Contraband. Defendants Considered Plaintiff's Cosmetics "Contraband" because of their "Personal hatred" towards Transexual, Transgendered People. Defendant Morrison Statement alone" Oh hell no, he will not walk around at this facility with make-

Pg 28

UP." Proves the evil and sadistic motives, then when Plaintiff showed (exhibit 1) KTS from Warden Carl Bear at J.H.C.C. that she was approved these items to purchase, that they in fact was not contraband should've been enough for Plaintiff to receive her cosmetics, but because Plaintiff was a Transgender woman in a males Prison the Discrimination occured. It should also be noted that O.D.O.C. Policy Contradicts themselves. (OP-140147 Management of Gender Non-Conforming Inmates, IV., Reasonable Accommodations for Gender Non Conforming Inmates, B. Inmate Property "Inmates will be Provided Standard ODOC attire in accordance with OP-030120 entitled "Inmate Property." Gender Non Conforming inmates may receive Consideration for undergarments or other gender Non Conforming Property.... Any approved Property will be allowed at subsequent facilities should the inmate transfer unless the approval has been revoked.") (See Plaintiff's exhibit 1) I was approved. (for above Policy Quote see Plaintiff's exhibit 25-13, 14, 15, 16) The Plaintiff Objects to Defendant's He stating that Plaintiff signed the notice on Aug 6 2018, Plaintiff signed Notice on 5-16-18 (See

Pg 29

exhibit 3 carbon copy.) Plaintiff stated she wanted her Property sent home if anything (see exhibit 3 carbon copy.) Plaintiff was told by Chief Carmon (see exhibit 25-12) that Plaintiff could receive her items. Defendant Morrison refused to relinquish the items. The defendants allege that if Plaintiff was not happy with SGT Morrison decision that Plaintiff should have submitted a Property claim to the Property officer who in fact is SGT Morrison (the defendant) their argument has no logical sense, with all respect the Defendants superior staff Chief stated to return these items, why weren't they returned? Because Defendants had "Personal feelings" towards Plaintiffs lifestyle. Once Plaintiff filed a Grievance Plaintiff was told Property issues at Private contract facility are not Grievable. (See Defendants, Exhibit 8, Pg 4, checkbox 5.) When a issue is not "Grievable" it means no "available remedies" exist. See: Duke Vs Chandler, 438 F.3d 804, 809, 812 (7th Cir. 2006); Lakounty V. Johnson, 253 F. Supp 2d 496, 502-04 (W.D.N.Y. 2003); Aiello V. Litscher, 104 F. Supp. 2d. 1068, 1074 (W.D. Wis. 2000) Plaintiff is a

Pg 30

O.D.O.C. Inmate whom was housed at a Private Contracted Facility, O.D.O.C have Policy and Procedures given to Him upon arrival, Davis Corr. Facility does not. One would assume that Him Grieve (exhaust) just like at other Oklahoma Prison facilities. But CCA failure to Provide this "Policy" made the remedy unavailable to the Plaintiff. Westefer V. Snyder, 422 F.3d 570, 580 (7th Cir. 2005); Shakeed-Muhammed V. DiPaolo, 393 F. Supp. 2d 80, 97 (D. Mass. 2005), ("Having failed to abide by the strictures of their own regulations, defendants shall not be allowed to Claim Plaintiff's Non compliance as a bar."); Miller V. Berkebile, No. 3:07-CV-0712-B ECF, 2008 WL 633552, at *7-9 (N.D. Tex. Mar. 10, 2008); Gobert V. Lee County, 510 F.3d 1312, 1322-23 (11th Cir. 2007) Holding Grievance appeal was not an available remedy where Prisoners were not informed of its existence and had no way to find out.) Plaintiff appealed this matter Per O.D.O.C Policy 090124 (See Exhibit C4) The ARA ruled ("out of-time") because Plaintiff was Due

Pg 23

Z n S. H.h on July 4th 2018 (See Affidavit of Plaintiff) And did not receive her Property until a week or two later, once Plaintiff received her Property She immediately filed the Appeal, It Should be Noted also that At this Point in time Plaintiff Ms. Johnson wishes to supplement her Complaint Pursuant to Fed. R. Civ. P. 15(a), 15(d) To Add Terry Underwood, and 22 more defendants, 7 of those newly added Defendants are employed at (CA (Davis Corr. Facility) After Plaintiff filed her lawsuit She was Subjected to more retaliation. (See Affidavit of Plaintiff) The EHR record Stakes that on 3-26-18, I Spoke with a Bethany Wagener telling her that Patricia Jones evaluated me and did indicate that Patricia Jones Stated I had Gender dysphoria and that is why Dr. Moore initiated Estrogen. This is another lie and, game that these Prison officials do at O.D.O.C. On 3-26-18 I filled out a "sick call" to be evaluated for Undergarments. (See exhibit 12-1) on 3-26-18, the Physician Bethany Wagner Stated that she would Not Order My Undergarments, I was made aware by Mental health Staff →

Pg32

"AJ" never put a order in my medical chart. The Dr. Wagner stated that i needed to be evaluated by Patrica Jones. I showed her my medical records were, i was evaluated at Oklahoma County Jail that i was on Hormone replacement Prior to O.D.O.C. that i was already evaluated at Oklahoma County that i was Prescribed Estradiol, Spironolactone, at Oklahoma County Jail and once arrived at O.D.O.C was Continued on them. I Never said Dr. more initiated my Hormone replacement therapy. I clearly was on them before i even arrived at J.H.C.C. (check Dr. more records) (see exhibits 81, 82, 82 Backside, 83, 84, 85, 91, 91 Backside 10-1,) That is evidence that O.D.O.C officials lie on medical records, which is how Plaintiff ms. Johnson's medical rights have been violated and still currently are at another facility, this is why Plaintiff wishes to add/supplement her complaint. Because of this EHR system the serious medical needs of Plaintiff will not be met unless this case goes to trial. Please Note that the Policy defendants cite OP-140147 is the August 27, 2018 revised edition, which went ineffect Aug. 27, 2018, Defendant Sanders

Pg. 33

Rall Larimer came to the conclusion to discontinue Plaintiff's Hormone replacement Therapy on 5-23-14, so the Policy at that time stated, the following" Hormonal treatment (1.) Hormonal treatment of inmates with Gender Dysphoria ... (a) has been confirmed by a qualified mental health professional based on the diagnostic criteria of the Diagnostic and Statistical Manual of mental Disorders. (b.) A female to male Hormonal Therapy risk and information form ... is read and signed by the inmate and scanned into the inmate's electronic health record. (2) Once the above steps have been completed, hormonal treatment may be considered by the qualified medical provider if the following (a.) Hormonal treatment was initiated prior to incarceration ..." (See exhibit 20-5) This Policy was the one in effect at the time Plaintiff's rights were Violated. (6-5-17, latest ed. on 5-23-18) (1.) Plaintiff met the 1st Criteria, she was diagnosed by a Qualified mental health professional at Oklahoma County (See exhibit 85) (2.) Plaintiff signed a male-to female Hormonal therapy risk and Information form at First Fidelity (N.F.C.C.) Northfork Corr. Center (See exhibit 91, 91

Pg334

Backside.) And Plaintiff met the third criteria. (3.) Plaintiff hormones treatment was initiated Prior to incarceration. (See exhibits 81, 82, 82 Backside, 83, 83 Backside, 84, 84 Backside, 85, 13) However Plaintiff was on her hormone replacement therapy for 2 years and 8 months uninterrupted while In D.O.C. (exhibit 10-1, 10-2, 10-3) But also note that even though Dr. Patricia Jones (a unqualified mental health Professional Not experienced in Gender dysphoria, see exhibits 17-21-32, 33-49.) maliciously lied about Plaintiffs criteria for gender dysphoria se never concluded her report to discontinue Plaintiff's Hormone replacement Therapy. (See exhibit 14-9) Defendants did that on their own accord, why? because of Personal feelings towards the Plaintiffs lifestyle as a Transsexual woman in a males Prison. Defendants alleged that unit Staff did not discriminate or retaliate against Plaintiff this also a lie. (See Plaintiff, and Inmate Marquis Porter Decl.) Plaintiff filed a RTS (Start of Grievance Process) and It was never returned and still have not been returned to Plaintiff. Plaintiff requested It on multiple occasions But the RTS is never sent. The Law Library

Pg. 35

at D.C.F. and Terry Underwood and Mail Room (Where unit manager Martinez wife works) is all in Cahoots together With Interfering with Plaintiff's Mail, Grievances, The Plaintiff Can and will Show this Court the games that the defendants Play when it comes to exhausting administrative remedies. Grievance No. 2015-160 is exhausted because If a issue is not "grievable" then there is "No Available remedy." Turner Vs. Burnside, 541 F.3d 1077, 1084 (11th Cir. 2006) "remedies that rational inmates cannot be expected to use are not capable of accomplishing their purposes and so are not available."; Dole V. Chandler, 438 F.3d 804, 811-12 (7th Cir. 2006); Queens Vs. Keeting 464 F.3d 763, 769, (8th Cir. 2006) Plaintiff still Appealed though Grievance was denied. Appeal was also returned unanswered. Terry Underwood has lied under oath. Terry underwood states that Plaintiff Johnson never filed Grievances based on Discrimination and retaliation? When indeed Plaintiff has (See exhibit's 2a 3-7 see Terry Underwood's Affidavit) Plaintiff asked that Ms. underwood be Persecuted for Penalty of Perjury and Affidavit

Dismissed as Construeted fraudo
Grievance No. 2018-166 3 Plaintiff was
Informed on Mall 23rd 2018 by Ray
Larimer and Dr. Shepard that Patrica
Jones Denied her hawm Gender dysphoria
and that Ms. Jones stated basically to
discontine" Plaintiff 's "hormones." . Plaintiff
Immediatly filed a RFS to Dr. Patrica
Jones (See exhibit 18-5) where Dr. Jones
basically stated "You need to discuss
Your diagnosis with Your Primary QMHP.
All medicational decisions are made by
Medical." Plaintiff's QMHP is Dr.
Shepard, the same Dr. Shepard whom
with Defendant Ray Larimer Informed
the Plaintiff they would be stopping her HRT
and which Plaintiff shared medical records
(See exhibits 81, 82, 83, 84, 85, 82 Backside,
83, Backside 13), (See also 10-1, 10-2, 10-3,
10-4) which they stated it was Not them
But Patrica Jones who stated to discontinue
Plaintiff's hormone therapy, when in fact
Ms. Jones report Stated No such
things (See exhibit 14-9) So Speaking
With Dr. Shepard was already done, that
is how Plaintiff found out about the denial
of her hawm Genderdysphoria, Plaintiff didn't
actually get the report until 5-2-19 (See
exhibit 19-5) when Plaintiff had Money on
her account to get the records. That is

Pg 37

when it all came out that Dr. Sanders, Ray Larimer decided to deny my estradiol, ~~[illegible]~~ spironalactone (See exhibit 19-2, 19-4, 19-5, 19-6) Plaintiff did file a Grievance 2018-166, which was returned unanswerd for the following reasons: (1) An Answered request to staff form addressed to the correct staff member must be attached."
- A Answerd "RTS" was attached to and from the correct staff member (See exhibit 18-5, 18-1, 18-2) this is one of the few games these staff play. (2) "You are on Grievance restriction proper documentation not included." Plaintiff had No idea You could be placed on a "Grievance restriction." (See exhibit 18-1) (3) last, not least the officals have the power to return Your grievance back for something Not even in Policy by checking "other:" (See exhibit 18-2) Plaintiff appealed to ARA (O.D.O.C) which is the finale stage and ~~her~~ Appeal was returned Unanswerd by the ARA, claiming Plaintiff's appeal was "out of time"! (See exhibit 18-7) Plaintiff receivd response from reviewing authority (Defendant Ray Larimer) on July 5th 2018. (See exhibit 18-1) ARA Responded July 26 2018. (See exhibit 18-7) when indeed

Pg 38

Oklahoma Dept of Corr. Policy states"
"the reviewing authority may choose to
extend the submitting Period up to 60 days
for good cause." (See exhibit 21-6, Vol. A. 2,)
Defendants and offical clearly don't follow
their own Policies, all O.P.D.C Policy's
Contradict one another. Miller Vs. Norris,
247 F.3d 736, 740 (8th Cir. 2001) "We
believe that a remedy that Prison officals
prevent a Prisoner from 'utiliz[ing]' is
not an 'available remedy' under § 1997e(a)..."";
Labounty V. Johnson, 253 F.Supp.2d 496,
502-04 (W.D.N.Y. 2003) (holding grievance
Supervisors alleged failure to follow Procedures,
Preventing Plaintiffs appeal, barred summary
"Judgement for Non-exhaustion.")"; Brownell
V. Krom, 446 F.3d 305, 312-13 (2d. Cir 2006)
(Prison officals didn't follow their own rules.)
This applies to All the "allege" Non-exhaustion
requirements. This case has lot's of exhibits,
Paperwork that still have not been copied
because of the Prison's refuse to copy
exhibits claim it is "not of a legal nature."
So Plaintiff asks this court to allow
discovery to Prove that she exhausted
administrative remides and that Defendants
Policy is inadequate, Non Consistent and
that offical Play games when it comes
to exhausting administrative remedies
Also Plaintiff asks this court to also

Issue a order so that Plaintiff may obtain Affidavits from Inmate Marquis Porter #786756 whom is located at the Lawton Corr. Facility, 8607 SE Flowermound Rd. Lawton, OK 73501, Through legal correspondence since Plaintiff is appearing "Pro se", under Fed. R. C. V. P. Rule 56(f) the Judge has the Power to "issue any other just order." Also to Interview Inmate Porter through telecommunication and any and all Defendants witnesses. Also to order a outside examination by a outside Doctor-Specialized In Gender Dysphoria, Amanda Kleeman, LPC, NCC, MS A Specialist In Gender Therapy (918) 779-3754; Kelley Bronnell Blair, LPC, MS, CM III - The diversity center of Oklahoma Inc. - works with LGBTQ communities (405) 622-3191, Christopher D Allen, Psychologist, PHD, LPC, LMFT (405) 266-1836, Plaintiff ask the court to issue a order to one of the above Specialist to distinguish that the Defendants are making up this lie that Plaintiff is not gender dysphoric. Pursuan to Fed. R. C. V. P. Rule 35. This relief Plaintiff does Pray.

~ Defendant Martinez Affidavit is also a lie under oath, Plaintiff was discriminated against and retaliated against by unit manager martinez, Terry underwood and unit manager martinez keep ~~~ alleging that they had No visibility of any Grievances". I never stated he "seen" a grievance. I stated he retaliated and Discriminated against me for filing Grievances and being LGBTQZ+. (Transgender) (See Plaintiff's declarations, Inmate Porters Declaration.) No Officer of any kind seen me and Inmate Porter "fighting" Nor engaged in "horseplay!" the ~~~ CPT asked me how I got "scratches" I stated me and My cellmate "horseplaying". So how can the Defendant issue a NON-association when O.D.O.C. Policy Prohibits Staff NON-Associations from being issued on "minor altercations" that the inmate must →

request it. Neither me or my cellY requested separation
on each other, This is how You know this is Discrimination
and retaliation, The Defendant martinez clearly does not
follow O.D.O.C. Policy or their own Policy's, so how
can they follow the Supreme law of land???
Please See: Declarations of Plaintiff and Inmate
Porter, Defendant claims he could've never known
about a grievance when indeed he is Defendant
Shanna Taylor's supervisor, whom "Investigated"
Grievance #2019-00102, which was decided
On 3-14-19 the same day Defendant Martinez
AND Shanna Taylor came to FD-210 and threat
Plaintiff And Cellmate. (See exhibit 22-3, Plaintiff
and Inmate Marquis Porter's Decl.) which in fact
was retaliation And Discrimination. Blue Card
while Don't like (Paperwork, Exhibits,) Not No
frivolous Exhibit's, Whether ~~Plaintiff~~ Defendants
followed O.D.O.C. Policy or not they were
made aware through RTS and Grievances
that their actions were violating Plaintiff's
Constitutional rights, which Defendants
Continued to do, Lastly Plaintiff would like
to Point out that these Defendants and O.D.O.C.
Hide behind this Grievance Policy like it is
Kryptonite to A §1983 Civil rights Complaint.
All they have to do is mark Your Grievance as "Out-
Of-time" "Unanswered", Point out a million mistakes.
Even a Court gives Pro se Inmates leeway →

Pg. 41

To not be held as the same standard as a Attorney licensed in Law. See, Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (stating that Prisoner should be allowed opportunity to offer proof unless it appears beyond doubt that Prisoner can prove no facts to support his claim.); Ruston v. Wright, 459 F.3d 241, 248 (2d. Cir. 2006) ("We construe complaints filed by pro se litigants liberally and interpret them to raise the strongest arguments that they suggest.") (internal quotations and citations omitted); Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991) ("A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. We believe that this rule means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements. At the same time, we do not believe it is the proper function of the district court to assume the role of advocate for the pro se litigant.") So why should the defendants Grievance Procedure be any harsher, stricter? A Lawller couldn't even pursue a Grievance correctly because the defendant's Grievance allows Your Grievance to be dismissed by reasons not even in Policy by checking "Other:". Basically the defendants use this Grievance Procedure as a "Get-out-of-lawsuit-free card." which in fact would defeat the purpose of a 42. U.S.C. § 1983 civil rights complaint, which would also defeat and violate the U.S. Constitution of the first, fifth and ~~fourteenth~~ Fourteenth which together makes the "Access to Courts" right. The question in this case is whether, by enacting the exhaustion requirement in the Prison litigation reform Act of 1995 (PLRA), Congress intended to authorize State Correction Officials to impose a comparable

Pg. 42

limitation on Prisoners constitutionally protected right of access to the federal Courts. Congress enacted the following exhaustion requirement in the PLRA:

"No action shall be brought with respect to Prison Conditions under section 1983 of this title, or any other Federal Law, by a Prisoner Confined in any jail, Prison, or other Correctional facility until such administrative remedies as are available are exhausted" 42 U.S.C. § 1997e(a).

This Provision requires Prisoners to exhaust informal remedies before filing a lawsuit under federal law. They must file an administrative grievance and, if the resolution of that grievance is unsatisfactory to them, they must exhaust available administrative appeals. The statute, however, says nothing about the reasons why a Grievance may have been denied; it does not distinguish between a denial on the merits and a denial based on Procedural error. It does not attach any significance to a Prison Official's decision that a Prisoner has made Procedural missteps in exhausting administrative remedies. In the words of federal Courts Jurisprudence, the text of the P.L.R.A does not impose a Sanction of forfeiture or Procedural default upon those Prisoners who make such Procedural errors. See: Engle v. Isaac, 456 U.S. 107, 125-

Pg 43

126 (1982) (explaining that "the Problem of waiver is separate from the question whether a state Prisoner has exhausted state remedies.") the Plain text of the PLRA simply requires that "such administrative remedies as are available" be exhausted before the Prisoner can take the serious step of filing a federal lawsuit against the officals who hold him in custody. However the defendants and their sucessors, employees concludes that the P.L.R.A. exhaustion requirement requires "Proper exhaustion." The absence of textual support for that conclusion is a sufficient reason for rejecting it. Unlike 28 U.S.C. § 2244 (d)(2), a tolling Provision of the Antiterrorism and Effective Death Penalty Act of 1996, which was signed into law just two days before the PLRA, 42 U.S.C. § 1997 e(a) lacks any textual requirement of "Proper exhaustion" See Artuz V. Bennett, 531 U.S. 4, 8, (2000) (explaining the importance of the textual requirement that an application be "Properly filed" under 28. U.S.C. § 2244(d)(2).) Instead, just as in the habeas context, under the PLRA a Prisoner "who has [Procedurally] defaulted his federal claims in [a state Prison Grievance Proceeding] meets the technical requirements for exhaustion; there are no state remedies any longer 'available' to him." Coleman V. Thompson, 501 U.S. 722, 732 (1991) Accordingly, under the Plain text of 42 U.S.C. § 1997e(a) Plaintiff satisfied her duty to exhaust available administrative remedies before filing a federal lawsuit. The defendants dis-

Pg. 44

regard of the Plain text of the PLRA is especially unjustified in light of the backdrop against which the statute was enacted. We Presume, of course, that Congress is familiar with Court's Precedents and expects its legislation to be interpreted in conformity with those Precedents. See Edelman v. Lynchburg College, 535 U.S. 106, 107, 117 (2002); Porter v. Nussle, 534 U.S. 516, 528 (2002); North Star Steel Co. v. Thomas 515 U.S. 29, 34 (1995). This strong Presumption is even more forceful when the underlying Precedent is "unusually important." Gebser v. Lago Vista Independent School Dist., 524 U.S. 274, 294 (1998) (Quoting Cannon v. University of Chicago, 441 U.S. 677, 699 (1979)). Consistent with this Presumption, if Courts have already provided a definitive interpretation of the language in one statute, and Congress then uses nearly identical language in another statute, Courts will give the language in the latter statute an identical interpretation, unless there is a clear indication in the text or legislative history that the Court should not do so. See United States v. Wells, 519 U.S. 482, 495 (1997). Under these elementary Principles of statutory interpretation, the PLRA's exhaustion requirement does not incorporate a Procedural default component. The PLRA's exhaustion Provision is essentially identical to that of

Pg. 45

the habeas corpus statute, a provision in the federal habeas statute, first enacted in 1948 as a codification of a previous judge-made rule. (See O'Sullivan v. Boerckel, 526 U.S. 838, 850-853 (1999) (STEVENS, J., joined by GINSBURG and BREYER, JJ., dissenting) (tracing history of exhaustion requirement in habeas law).) bars relief "unless it appears that ... the applicant has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A). The PLRA similarly bars judicial relief "until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). The only noteworthy distinction between the two provisions is that 28 U.S.C. § 2254(b)(1)(A) uses the word "unless" whereas 42 U.S.C. § 1997e(a) uses the word "until". If anything, this distinction suggests that the exhaustion requirement in the PLRA is less amenable to a waiver exception than the comparable requirement in the habeas statute. The word "until" indicates a temporal condition whereas the word "unless" would have been more appropriate for a procedural bar. Notwithstanding the use of the word "unless" in 28 U.S.C. § 2254(b)(1)(A). The Supreme Court has held that state-court remedies are "exhausted" for the purposes of the federal habeas statute so long as "they are no longer available, regardless of the reason for their unavailability." Wainwright v. Sykes, 433 U.S. 72, 97 (1977);

Pg46

Mitchum v. Foster, 407 U.S. 225, 242 (1972); Muhammad v. Close, 540 U.S. 749, 751 (2004); James v. Kentucky, 466 U.S. 341, 348 (1984), Murray v. Carrier, 477 U.S. 478 (1986); see Coleman, 501 U.S. at 731; Castille v. Peoples, 489 U.S. 346, 351 (1989); Teague v. Lane, 489 U.S. 288, 298 (1989); Engle, 456 U.S. at 125; Humphrey v. Cady, 405 U.S. 504, 516 (1972); Fay v. Noia, 372 U.S. 391, 434-435 (1963). The Purpose of a 42 U.S.C. § 1983 action such as that filed by [redacted] is not to obtain direct review of an order entered in the grievance procedure, but to obtain redress for a alleged violation of federal law committed by state correctional officials. See Mitchum v. Foster 407 U.S. 225, 242 (1972). It is undisputed that the PLRA does nothing to change the nature of the federal action under § 1983; Prisoners who bring such actions after exhausting their administrative remedies are entitled to de novo proceedings in the federal district court without any deference (on issues of law or fact) to any ruling in the administrative grievance proceedings. As explained by Senator Hatch when he introduced the legislation on the Senate floor, the PLRA was needed because the quantity of frivolous suits filed by prisoners was, in Senator Hatch's view, making it difficult for "courts to consider meritorious claims." 141 Cong. Rec. 27042 (1995). He continued: "Indeed,

Pg 47

I do not want to Prevent inmates from raising legitimate claims. This legislation will not Prevent those claims from being raised." Ibid Similary, as Senator Thurmond, a cosponsor of the bill, Stated: "[The PLRA] will allow meritorious claims to be filed, but gives the judge broader discretion to Prevent frivolous and malicious lawsuits filed by Prison inmates." id., at 27544. "[T]he right of access to the courts is an aspect of the first Amendment right to Petition the Government for redress of grievances." Bill Johnson's Restaurants, Inc. V. NLRB, 461 U.S. 731, 741 (1983) Accordingly, the Constitution guarantees that Prisoners, like all citizens, have a reasonably adequate opportunity to raise Constitutional claims before impartial judges, see Lewis V. Casey, 518 U.S. 343, 351 (1996) moreover, because access to courts is a fundamental right, see id., at 346, government-drawn classifications that impose substantial burdens on the capacity of a group of citizens to exercise that right require searching judicial examination under the Equal Protection Clause. See Ohio V. Automobile Workers, 485 U.S. 360, 370 (1988) Defendants interpretation of PLRA violates the U.S. Constitution of Plaintiffs first, fifth and fourteenth amendment rights of access to courts and Equal Protection allowing them judgement would insult the Supreme law of land and make PLRA unconstitutional. Wherefore Plaintiffs

PJ:48

asks this Court to deny defendants motion to Dismiss, dismiss SGT Morrison, Terry Underwoods and Ernesto Martinez Credibility as Reliable witnesses, Defendants Separate and alternative Defenses be denied, Defendants attorney fees and cost of this action be denied, Terry Underwood and Ernesto Martinez be Persecuted for Penalty of Perjury, To allow discovery so Plaintiff can Prove exhaustion and that the defendant's Policy is inadequate, NON Consistent and that Defendants (Officials) Play games when it comes to exhausting administrative remedies, Issue a order so that plaintiff may obtain a Notarized Affidavit from Inmate Marquis Porter #786756 whom is located at the Lawton Correctional facility, 8607 SE Flowermound Rd. Lawton, OK 73501, Through legal Correspondence Since Plaintiff appears Pro se, under Fed. R. Civ. P. Rule 56(f), also to intervein inmate Porter and all defendants witnesses Via telecommunication. Also to order a outside examination by a outside Doctor Specilized in Gender dysphoria, Amanda Kleeman, LPC, NCC, MS (918) 779-3754, to distinguish the false medical reports Pursuant to Fed. R. Civ. P. Rule 35, for this relief Plaintiff does Pray.

B.49.

Respectfully submitted, this 3rd day of March, 2020.

LaMarr M. Johnson
O.S.P. 5 C-4-1
P.O. Box: 97
Mcalester, OK 74502

Date: 3-3-20

Certificate Of Service

I hereby Certify that a Copy of the foregoing Pleading/documents was Mailed to:

- Clerk, United States District For the Eastern District of Oklahoma, P.O. Box: 607, Muskogee, OK 74402
- Darrell L. Moore, OBA 6332
  P.O. Box: 368
  Pryor, OK 74362

on 3, —, 2020